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| <b>TRANSMITTAL FORM</b><br><br>(to be used for all correspondence after initial filing) | Application Number   | 09/363,456             |           |
|   | Filing Date          | July 29, 1999          |           |
|   | First Named Inventor | W. Benman              |           |
|   | Art Unit             | 2671                   |           |
|   | Examiner Name        | H. Cao                 |           |
| Total Number of Pages in This Submission  | 16                   | Attorney Docket Number | Virtual-2 |

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| SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT |                    |
|--|--------------------|
| Firm or Individual name                    | William J. Benman  |
| Signature                                  | <i>W.J. Benman</i> |
| Date                                       | March 22, 2004     |

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

**APPEAL NO:**

In re Application of  
W. Benman  
Serial No.: 09/363,456  
Filed: July 29, 1999  
For: SYSTEM AND METHOD FOR  
EXTRACTING IMAGES WITHOUT  
MONOCHROMATIC BACKGROUND

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**APPELLANT'S REPLY BRIEF**

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Group Art Unit: 2671  
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Examiner: H. Cao  
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Date: March 22, 2004  
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**APPELLANT'S REPLY BRIEF ON APPEAL** Technology Center 2600

Honorable Assistant Commissioner  
for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Appellant herein files a Reply Brief in response to the Examiner's Answer filed  
January 21, 2004 as follows:

**REPLY**

For the most part, Appellant relies on the arguments set forth in Appellant's Brief. However, Appellant respectfully submits that the following should be considered with respect to the Examiner's Answer.

Firstly, in Paragraph 11(1) of the Answer, the Examiner suggests that inasmuch as Applicant's Specification shows the use of a subtractor 22 (and other elements) and the resulting images are (according to the Examiner) equivalent, Parulski teaches means for performing a pixel-by-pixel comparison.

However, there are several shortcomings inherent in this position. First, the Examiner's position is based on the embodiment of Fig. 1, an alternative embodiment which is the subject of Claim 7, not Claim 1. That is, the Examiner is interpreting Claim 1 with respect to the teaching of Fig. 1. However, Claim 1 has been drafted to read on the embodiment of Fig. 2. Hence, it is unclear how the Examiner may properly reject Claim 1 on the basis of any purported similarities between Fig. 1 and the teachings of Parulski.

Second, it is not clear that the images are equivalent.

And third, assuming that the images are equivalent, the mere use of a subtractor in an embodiment of the invention coupled with equivalent images is not tantamount to a teaching of means for effecting pixel-by-pixel comparison as set forth in Claim 1.

Appellant respectfully submits that the Examiner's assertion that Parulski's steps of differencing, thresholding and filtering are not equivalent to pixel-by-pixel comparison as claimed. Hence, this basis for rejection is submitted as being improper and should be withdrawn.

Appellant is unable to understand and therefore unable to respond to the assertion that:


“At Table II (page 8 of the Brief), Appellant gives an example of a result of comparison used in Appellant’s application, which is exactly identical to the result of the foreground mask in Parulski’s figure 5.”

In any event, the second point to be noted is in regard to par. 11(3) of the Answer. Here, the Examiner suggests that Appellant’s template output by differentiator 26 is equivalent to Parulski’s foreground mask output from means 71 for applying a table threshold and concludes therefore that Parulski teaches the claimed means for differentiating the difference frame.

As noted in Appellant’s brief, this is the Examiner’s ‘result’ oriented test by which she suggests that regardless of the language of the claims, if the images can be said to look similar, the methods and systems used to create the images are not patentably distinct. That is, notwithstanding the fact that images may be created with a variety of techniques and systems, if the images can be said to be equivalent, the techniques and systems for creating the images are equivalent from the standpoint of patentability.

Inasmuch as this is not believed to be the test for patentability, Appellant respectfully submits that the Examiner's position is untenable and should be overturned. Accordingly, reconsideration of the final rejections, reversal of the rejections, allowance of the claims and passage of the subject application to issue are respectfully requested.

Respectfully submitted,

  
\_\_\_\_\_  
William J. Benman, Jr.  
Appellant

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